

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

EMMANUEL PACQUIAO,
Plaintiff,

v.

FLOYD MAYWEATHER, JR.; et al.,
Defendants.

2:09-CV-2448-LRH-RJJ

ORDER

Before the court is plaintiff Emmanuel Pacquiao's ("Pacquiao") ex-parte motion for an order granting limited discovery and a modified briefing schedule filed on April 2, 2010. Doc. #28¹. Defendants Richard Schaefer ("Schaefer") and Oscar de la Hoya ("de la Hoya") filed a response on April 6, 2010. Doc. #30. Thereafter, Pacquiao filed a reply on April 7, 2010. Doc. #31.

I. Facts and Background

Plaintiff Pacquiao is a premier professional boxer. On March 17, 2010, Pacquiao filed an amended complaint against defendants alleging defamation based upon statements that Pacquiao uses performance enhancing drugs. Doc. #13.

On March 25, 2010, defendants Schaefer and de la Hoya filed a special motion to dismiss under NRS 41.660, Nevada's Anti-SLAPP statute. Doc. #15. Thereafter, Pacquiao filed the present

¹ Refers to the court's docket number.

1 motion for limited discovery in order to oppose the motion. Doc. #28.

2 **II. Discussion**

3 Nevada's Anti-SLAPP statute, found at NRS § 41.635 *et seq.*, provides that a defendant
4 may file a special motion to dismiss within sixty days after service of the complaint.
5 NRS § 41.660(3)(a). If a special motion is filed, the court must treat the motion as one for summary
6 judgment and stay discovery pending a ruling on the motion. NRS § 41.660(3)(b). However, in
7 federal court, a plaintiff is entitled to seek limited discovery to oppose an anti-SLAPP motion. *See*
8 *e.g., Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 850 (9th Cir. 2001); *see also, Anderson v.*
9 *Liberty Lobby, Inc.*, 477 U.S. 242, 250 n.5 (1986) (a court is required to permit discovery where the
10 nonmoving party has not had the opportunity to discover information that is essential to its
11 opposition). Limited discovery is permitted when the plaintiff has "identified and requested
12 discovery of probative information solely available from the defendants." *Metabolife*, 264 F.3d at
13 850.

14 Here, Pacquiao seeks deposition testimony from the moving defendants as well as limited
15 document production relating to any statements about Pacquiao using performing enhancing drugs
16 directed at the Nevada Athletic Commission in order to oppose defendants' declarations and
17 motion. Doc. #28. The court has reviewed the papers and pleadings on filed in this matter and finds
18 that Pacquiao is entitled to limited discovery to oppose defendants' special Anti-SLAPP motion.

19 In support of their special motion, the moving defendants filed declarations stating that they
20 acted without malice and without knowledge of any statement's falsity. The court finds that
21 defendants' statements about their knowledge and reasoning is solely within their control. Without
22 contradictory evidence of defendants' mental state or knowledge, Pacquiao is unable to oppose
23 defendants' special anti-SLAPP motion. *See e.g., Metabolife*, 264 F.3d 832. Accordingly, the
24 court shall grant Pacquiao's motion to conduct limited discovery and extend the briefing schedule
25 for defendants' motion to dismiss.

1 **III. Scope of Discovery**

2 Pacquiao has attached to his motion proposed notices of depositions for the moving
3 defendants along with requests for the production of certain documents. *See* Doc. #28,
4 Exhibits 5, 6, 7. The court has reviewed the proposed production requests and finds it necessary to
5 outline the scope of Pacquiao's pre-opposition discovery.

6 Discovery is limited solely to those documents and issues relevant to opposing defendants'
7 anti-SLAPP motion. Pacquiao is entitled to take the depositions of defendants Schaefer and de la
8 Hoya, but questioning shall be limited to: (1) the issue of Pacquiao's alleged use of performance
9 enhancing drugs; (2) any statements or communications made by the defendants, their agents or
10 representatives in connection with that issue, including defendants' mental state, the circumstances
11 and basis upon which any statements were made; and (3) knowledge of any statement's falsity.

12 Document production shall be limited solely to Pacquiao's alleged use of performance
13 enhancing drugs and any related statements or communications made by defendants, their agents,
14 or representatives. At this time, Pacquiao may not seek information or documents relating to de la
15 Hoya's, or any other boxers, use of performance enhancing drugs.

16 IT IS THEREFORE ORDERED that plaintiff's motion for an order granting limited
17 discovery and extending the briefing schedule (Doc. #28) is GRANTED. Plaintiff is granted leave
18 to conduct discovery limited to the attached notices of depositions for defendants Richard Schaefer
19 and Oscar de la Hoya (Doc. #28, Exhibit 5, 6) and the attached subpoena *duces tecum* for non-party
20 Golden Boy Promotions, Inc. (Doc. #28, Exhibit 7) within the scope of discovery outlined by the
21 court. Plaintiff's opposition to defendants' motion to dismiss is due on May 7, 2010.

22 IT IS SO ORDERED.

23 DATED this 9th day of April, 2010.



24
25 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE